

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

IVY CAPITAL, INC., *et al.*,

Defendants, and

CHERRYTREE HOLDINGS, LLC, *et al.*,

Relief Defendants.

) Case No. 2:11-cv-00283-JCM-
) GWF

) **FINAL JUDGMENT AND**
) **ORDER FOR PERMANENT**
) **INJUNCTION AND**
) **MONETARY RELIEF**

Plaintiff, Federal Trade Commission (the “FTC” or the “commission”) filed a complaint for permanent injunction and other equitable relief, including redress to consumers and disgorgement of ill-gotten gains (the “complaint”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. §§ 6101-6108. Defendant Benjamin E. Hoskins (“Mr. Hoskins”) subsequently filed a motion for summary judgment concerning his individual liability in this action (doc. no. 312). Defendant Leanne Hoskins (“Ms. Hoskins”) also filed a motion for summary judgment concerning her liability as a relief defendant (doc. no. 320). The FTC filed a motion for summary judgment as to all allegations concerning Mr. Hoskins and defendant Dream Financial, as well as all allegations concerning relief defendants Leanne Hoskins (“Ms. Hoskins”), Oxford Financial, LLC (“Oxford Financial”) and Mowab, Inc. (“Mowab”) (Doc. No. 323).

BACKGROUND

1. This is an action by the commission instituted under Sections 13(b) and 19 of the

- 1 FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing Act, 15 U.S.C. §§
2 6101-6108. The commission has authority to seek the relief contained herein;
- 3 **2.** The commission's complaint states a claim upon which relief may be granted under
4 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's trade regulation rule
5 entitled the Telemarketing Sales Rule (the "TSR"), 16 C.F.R. Part 310;
- 6 **3.** This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and
7 1345, 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b);
- 8 **4.** Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. §
9 53(b);
- 10 **5.** The activities of Dream Financial and Mr. Hoskins (collectively, the "defendants") as
11 alleged in the commission's complaint are in or affecting commerce, as "commerce"
12 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
- 13 **6.** By virtue of the court's decision regarding the FTC's motion for summary judgment,
14 the defendants are liable for injunctive and equitable monetary relief for violations of
15 Section 5(a) of the FTC Act and the TSR. Furthermore, relief defendants Ms.
16 Hoskins, Oxford Financial and Mowab (the "relief defendants") are liable for
17 equitable monetary relief with respect to ill-gotten gains from violations of Section
18 5(a) of the FTC Act and the TSR.
- 19 **7.** Entry of this order is in the public interest.

20
21 **DEFINITIONS**

22 For the purpose of this order, the following definitions shall apply:

- 23 **1.** "And" and "or" shall be understood to have both conjunctive and disjunctive
24 meanings.
25

- 1 **2. “Asset”** means any legal or equitable interest in, right to, or claim to, any real,
2 personal, or intellectual property including, but not limited to, chattel, goods,
3 instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts,
4 mail or other deliveries, shares or stock, securities, inventory, checks, notes, accounts,
5 credits, receivables (as those terms are defined in the Uniform Commercial Code),
6 cash, trusts, including but not limited to asset protection trusts, and reserve funds or
7 other accounts associated with any payments processed on behalf of any defendant or
8 relief defendant, including, but not limited to, such reserve funds held by a payment
9 processor, credit card processor, or bank.
- 10 **3. “Assisting others”** includes, but is not limited to, providing any of the following
11 goods or services to another entity: (1) performing customer service functions,
12 including, but not limited to, charging consumers for products or services, or
13 receiving or responding to consumer complaints; (2) drafting or providing, or
14 arranging for the drafting or provision of, any promotional material; (3) providing
15 names of, or assisting in the generation of, potential customers; or (4) performing
16 promotional or marketing services of any kind, or recruiting affiliates; or (5)
17 processing credit and debit card payments.
- 18 **4. “Business coaching program”** means any program, plan, product, or service,
19 including, but not limited to, those related to work-at-home opportunities, that is
20 represented, expressly or by implication, to train or teach a participant or purchaser
21 how to establish a business or earn money or other consideration through a business.
22 “Business coaching” shall not include providing services other than training or
23 teaching, including, but not limited to, website design and search engine optimization.
- 24 **5. “Corporate defendant”** means Dream Financial and its successors, assigns, affiliates, or
25 subsidiaries.

- 1 **6. “Defendants”** mean the individual defendant and the corporate defendant,
2 individually, collectively, or in any combination.
- 3 **7. “Document”** is synonymous in meaning and equal in scope to the usage of the term
4 in the Federal Rules of Civil Procedure 34(a), and includes writing, drawings, graphs,
5 charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-
6 mail and instant messages, photographs, audio and video recordings, contracts,
7 accounting data, advertisements (including, but not limited to, advertisements placed
8 on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup
9 postings, World Wide Web pages, books, written or printed records, handwritten
10 notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business
11 canceled checks and check registers, bank statements, appointment books, computer
12 records, and other data compilations from which information can be obtained and
13 translated, if necessary, through detection devices into reasonably usable form. A
14 draft or non-identical copy is a separate document within the meaning of the term.
- 15 **8. “Individual defendant”** means Benjamin E. Hoskins.
- 16 **9. “Material”** means likely to affect a person’s choice of, or conduct regarding, goods
17 or services.
- 18 **10. “Non-disparagement agreement”** means any contract or agreement that purports to
19 prohibit purchasers from providing information, making statements, or otherwise
20 communicating in any way about their experiences with any business coaching
21 program or related goods and services, including but not limited to providing
22 information to state, federal or non-governmental entities, filing complaints with any
23 consumer protection entity, and engaging in discussions with other consumers
24 through online forums or any other means.
- 25

II.
PROHIBITED MISREPRESENTATIONS
AND OTHER CONDUCT PROHIBITIONS

IT IS FURTHER ORDERED that defendants and their representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are **hereby permanently restrained and enjoined from**:

- A.** Making, or assisting others in making, directly or by implication, any false or misleading statement or representation of material fact, including, but not limited to: any false or misleading statement that defendants or any other individual or entity will provide a refund to consumers who request one within a specified time period;
- B.** Failing to disclose or to disclose adequately to consumers material aspects of any refund policy; and
- C.** Requiring consumers to sign a non-disparagement agreement as a condition of receiving a refund.

III.
PROHIBITIONS AGAINST DECEPTIVE AND ABUSIVE TELEMARKETING
PRACTICES

IT IS FURTHER ORDERED that, in connection with telemarketing, defendants, and their representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, **are hereby permanently restrained and enjoined from** engaging in or causing or assisting other persons to engage in, violations of any provision of the TSR, including, but not limited to, the following:

- A.** Misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature or essential characteristics of their products

1 and services, in violation of Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. §
2 310.3(a)(2)(iii);

3 **B.** Failing to disclose or to disclose adequately, in a clear and conspicuous manner, all
4 material terms and conditions of any refund policy, in violation of Section 310.3(a)(1)(iii)
5 of the TSR, 16 C.F.R. § 310.3(a)(1)(iii), including that consumers must request a refund
6 within a specified time period after purchase;

7 **C.** Misrepresenting, directly or by implication, material aspects of the nature and terms of
8 any refund policy in violation of Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. §
9 310.3(a)(2)(iv), including that they will provide refunds to consumers who request one
10 within a specified time period;

11 **D.** Initiating, or causing others to initiate, outbound telephone calls to telephone numbers on
12 the National Do Not Call Registry (the “DNC Registry”) in violation of Section
13 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), unless

14 1. the seller has obtained the express agreement, in writing, of such person to
15 place calls to that person. Such written agreement shall clearly evidence such
16 person’s authorization that calls made by or on behalf of a specific party may
17 be placed to that person, and shall include the telephone number to which the
18 calls may be placed and the signature of that person; or

19 2. the seller has an established business relationship with such person and that
20 person has not previously stated that he or she does not wish to receive
21 outbound telemarketing calls made by or on behalf of the defendant or any
22 other individual or entity; and

23 **E.** Calling numbers on the DNC Registry without paying the annual fee necessary to access
24 the list of numbers on the DNC Registry in violation of Section 310.8 of the TSR, 16
25 C.F.R. § 310.8.

IV.
EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that judgment is hereby entered in favor of the commission and against Benjamin Hoskins and Dream Financial, jointly and severally with all other defendants in this case that have already settled with the FTC, in the amount of one hundred thirty million, three hundred seventy-five thousand, fifty-seven dollars and fifty-two cents (\$130,375,057.52), plus prejudgment interest in the amount of three million, five hundred eighty-nine thousand, four hundred twenty-six dollars and ninety-two cents (\$3,589,426.92), as equitable monetary relief for consumer injury.

IT IS FURTHER ORDERED that judgment is hereby entered in favor of the commission and against relief defendant Oxford Financial in the amount of one million, five hundred twenty-nine thousand, two hundred ninety-two dollars and twenty-five cents (\$1,529,292.25), plus prejudgment interest in the amount of nine thousand, two hundred fifty-four dollars and forty-eight cents (\$9,254.48), as equitable monetary relief for ill-gotten gains.

IT IS FURTHER ORDERED that judgment is hereby entered in favor of the commission and against relief defendant Leanne Hoskins in the amount of one million, one hundred twenty-eight thousand, seven hundred ninety-five dollars and seventy-eight cents (\$1,128,795.78), plus prejudgment interest in the amount of six thousand, eight hundred thirty dollars and eighty-nine cents (\$6,830.89), as equitable monetary relief for ill-gotten gains.

IT IS FURTHER ORDERED that judgment is hereby entered in favor of the commission and against the relief defendant Mowab in the amount of two hundred three thousand, one hundred eighteen dollars and forty cents (\$203,118.40), plus prejudgment interest in the amount of one thousand, two hundred twenty-nine dollars and seventeen cents (\$1,229.17), as equitable monetary relief for ill-gotten gains.

V.

**PROHIBITION ON RELEASE OF
CUSTOMER INFORMATION OR CUSTOMER LISTS**

IT IS FURTHER ORDERED that the defendants and their representatives, whether acting directly or through any corporation, partnership, subsidiary, division, agent, or other device, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, e-mail address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person that the defendants obtained prior to entry of this order in connection with the advertisement, marketing, promotion, offering for sale, or sale of any business coaching programs; and
- B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of if currently under the control of the commission or the court-appointed receiver. Further, such information may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VI.

ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of the defendants' assets set forth in the preliminary injunction, entered by this court on March 25, 2011, shall remain in place until further order of court and shall only be lifted as is necessary to effect the turnover of the

1 defendants' assets in partial satisfaction of the equitable monetary relief provisions set forth in
2 section IV of this order.

3 **VII.**
4 **APPOINTMENT OF RECEIVER TO WIND DOWN**
5 **CORPORATE DEFENDANT AND LIQUIDATE ASSETS**

6 **IT IS FURTHER ORDERED** that Robb Evans & Associates, LLC, the receiver
7 appointed by prior orders of this court, is hereby appointed receiver for the corporate defendant
8 for the purpose of taking the necessary steps to wind down the business of the corporate
9 defendant, liquidate its assets, and pay any net proceeds to the FTC to satisfy the monetary
10 judgment in this order. In carrying out these duties, the receiver shall be the agent of this court,
11 shall be accountable directly to this court, and is authorized and directed to:

- 12 **A.** Take any and all steps that the receiver concludes are appropriate to wind down the
13 corporate defendant;
- 14 **B.** Continue to exercise full control over the corporate defendant and continue to collect,
15 marshal, and take custody, control, and possession of all the funds, property, premises,
16 accounts, documents, mail, and other assets of, or in the possession or under the control
17 of the corporate defendant, wherever situated, the income and profits therefrom, and all
18 sums of money now or hereafter due or owing to the corporate defendant, with full power
19 to collect, receive, and take possession of all goods, chattels, rights, credits, monies,
20 effects, lands, leases, books and records, limited partnership records, work papers, and
21 records of accounts, including computer-maintained information, contracts, financial
22 records, monies on hand in banks and other financial institutions, and other papers and
23 documents of other individuals, partnerships, or corporations whose interests are now
24 held by or under the direction, possession, custody, or control of the corporate defendant
25 (“receivership estate”);

- 1 **C.** Continue to have full control over the management and personnel of the corporate
2 defendant, including the authority to remove, as the receiver deems necessary or
3 advisable, any director, officer, independent contractor, employee, or agent of this
4 defendant from control of, management of, or participation in, the affairs of this
5 defendant;
- 6 **D.** Take all steps necessary or advisable, including issuing subpoenas, to locate and liquidate
7 all other assets of the corporate defendant, cancel the corporate defendant's contracts,
8 collect on amounts owed to the corporate defendant, and take such other steps as may be
9 necessary to wind-down, terminate, and dissolve the corporate defendant efficiently;
- 10 **E.** Take all steps necessary or advisable, including issuing subpoenas, to identify the name,
11 address, telephone number, date of purchase, program or product purchased, total amount
12 paid, amount of any full or partial refund or chargeback, and payment information for
13 consumers who were charged by the corporate defendant, and provide the FTC, upon
14 request, with any customer records or other business records of the corporate defendant;
- 15 **F.** Make payments and disbursements from the receivership estate that are necessary or
16 advisable for carrying out the directions of, or exercising the authority granted by, this
17 order. The receiver shall apply to the court for prior approval of any payment of any debt
18 or obligation incurred by the corporate defendant prior to the date of entry of the
19 temporary restraining order in this action, except payments that the receiver deems
20 necessary or advisable to secure and liquidate assets of the corporate defendant, such as
21 rental payments or payment of liens;
- 22 **G.** Continue to perform all acts necessary or advisable to complete an accounting of the
23 receivership assets, and prevent unauthorized transfer, withdrawal, or misapplication of
24 assets;
- 25

- 1 **H.** Continue to maintain accurate records of all receipts and expenditures that the firm makes
2 as receiver;
- 3 **I.** Enter into contracts and purchase insurance as advisable or necessary;
- 4 **J.** Continue to defend, compromise, adjust, or otherwise dispose of any or all actions or
5 proceedings instituted in the past or in the future against the receiver in the firm's role as
6 receiver, or against the corporate defendant, as the receiver deems necessary and
7 advisable to carry out the receiver's mandate under this order;
- 8 **K.** Continue to institute, compromise, adjust, appear in, intervene in, or become party to
9 such actions or proceedings in state, federal, or foreign courts or arbitration proceedings
10 as the receiver deems necessary and advisable to carry out the receiver's mandate under
11 this order;
- 12 **L.** Continue to maintain bank accounts created as designated depositories for funds of the
13 corporate defendant, and make all payments and disbursements from the receivership
14 estate from such an account;
- 15 **M.** Continue to perform all incidental acts that the receiver deems to be advisable or
16 necessary, which includes retaining, hiring, or dismissing any employees, independent
17 contractors, or agents;
- 18 **N.** Continue to cooperate with reasonable requests for information or assistance from any
19 state or federal law enforcement agency;
- 20 **O.** Dispose of, or arrange for the disposal of, the records of the corporate defendant no later
21 than six months after the court's approval of the receiver's final report as to the
22 receivership estate, except that:
- 23 **1.** to the extent that such records are reasonably available, the receiver shall arrange
24 for records sufficient to ascertain the funds that an individual consumer paid to
25

1 the corporate defendants and any refunds provided to individual consumers, to be
2 retained for a minimum of one year from the entry of this order, and

- 3 2. if state or local law regulating the corporate defendant's business requires the
4 retention of particular records for a specified period, the receiver shall arrange for
5 such records to be disposed of after the specified period has expired.

6 **P.** To safeguard the privacy of consumers, records containing personal financial information
7 shall be shredded, incinerated, or otherwise disposed of in a secure manner. For records
8 that must be retained, the receiver may elect to retain records in their original form or to
9 retain photographic or electronic copies;

10 **Q.** Perform all acts necessary to protect, conserve, preserve, and prevent waste or dissipation
11 of corporate defendant's assets until their sale;

12 **R.** Sell the corporate defendant's assets without further order of the court;

13 **S.** Enter into agreements in connection with the reasonable and necessary performance of
14 the receiver's duty to sell the corporate defendant's assets, including, but not limited to,
15 the retention of assistants, agents, or other professionals to assist in the sale of the these
16 assets; and

17 **T.** Distribute to the commission, without further order of the court, the funds received from
18 the sale of the corporate defendant's assets.

19 **VIII.**
20 **COMPENSATION OF RECEIVER**

21 **IT IS FURTHER ORDERED** that the receiver and all personnel hired by the receiver,
22 including counsel to the receiver and accountants, are entitled to reasonable compensation for the
23 performance of duties pursuant to this order and for the cost of actual out-of-pocket expenses
24 incurred by them, from the assets now held by, in the possession or control of, or which may be
25 received by, the defendants. The receiver shall apply to the court for approval of specific

1 amounts of compensation and expenses, and must not increase the hourly rates used as the bases
2 for such fee applications without prior approval of the court.

3
4 **IX.
RECEIVER'S FINAL REPORT AND DISBURSEMENT**

5 **IT IS FURTHER ORDERED** that:

- 6 **A.** The receiver shall, as directed in Section VII of this order, liquidate the assets of the
7 corporate defendant as soon as practicable. No later than sixty (60) days from the date of
8 the entry of this order, the receiver shall file and serve on the parties a report (the "final
9 report") to the court that details the steps taken to dissolve the receivership estate. The
10 final report must include an accounting of the receivership estate's finances and total
11 assets and a description of what other actions, if any, must be taken to wind down the
12 corporate defendant.
- 13 **B.** The receiver shall mail copies of the final report to all known creditors of the corporate
14 defendant with a notice stating that any objections to paying any assets of the corporate
15 defendant to satisfy the receiver's costs and expenses and the monetary judgment set
16 forth in this order must be submitted to the court and served by mail upon the receiver
17 and the parties within thirty (30) days of the mailing of the final report.
- 18 **C.** No later than thirty (30) days after submission of the final report, the receiver shall file an
19 application for payment of compensation and expenses associated with his performance
20 of his duties as receiver.
- 21 **D.** The court will review the final report and any objections to the report and, absent a valid
22 objection, will issue an order directing that the receiver:
- 23 1. pay the reasonable costs and expenses of administering the receivership estate,
24 including compensation of the receiver and the receiver's personnel authorized by
25

Section VII of this order or other orders of this court and the actual out-of-pocket costs incurred by the receiver in carrying out his duties; and

2. pay all remaining funds to the FTC or its designated agent to reduce the monetary judgment in Section IV.

E. If subsequent actions (such as the completion of tax returns or further actions to recover funds for the receivership estate) are appropriate, the receiver shall file an additional report or reports (the “supplemental reports”) describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent acts.

F. With court approval, the receiver may hold back funds for a specified period as a reserve to cover additional fees and costs related to actions to be addressed in a supplemental report. If the receiver does not make a supplemental application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payment of fees and expenses approved by the court in response to such a supplemental application, all funds in the reserve funds shall be immediately paid to the FTC or its designated agent.

X.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that defendants and relief defendants obtain acknowledgments of receipt of this order:

A. Within seven (7) days of entry of this order, each defendant and relief defendant must submit to the commission an acknowledgment of receipt of this order sworn under penalty of perjury.

B. For twenty (20) years after entry of this order, individual defendant for any business for which he, individually or collectively with any other defendant named in the complaint,

1 is the majority owner or directly or indirectly controls, and corporate defendant, must
 2 deliver a copy of this order to: (1) all principals, officers, directors, and managers and (2)
 3 any business entity resulting from any change in structure as set forth in Section XI,
 4 below. Delivery must occur within seven (7) days of entry of this order for current
 5 personnel. To all others, delivery must occur before they assume their responsibilities.

6 **C.** From each individual or entity to which a defendant delivered a copy of this order, that
 7 defendant must obtain, within thirty (30) days, a signed and dated acknowledgement of
 8 receipt of this order.

9 **XI.** 10 **COMPLIANCE REPORTING**

11 **IT IS FURTHER ORDERED** that defendants make timely submissions to the
 12 commission:

13 **A.** One (1) year after entry of this order, defendants must submit a compliance report,
 14 sworn under penalty of perjury.

15 **1.** Defendants must: (a) designate at least one telephone number and an email,
 16 physical, and postal address as points of contact, which representatives of the
 17 commission may use to communicate with defendants; (b) identify all of that
 18 defendant's businesses by all of their names, telephone numbers, and physical,
 19 postal, email, and Internet addresses; (c) describe the activities of each
 20 business, including the products and services offered, the means of
 21 advertising, marketing, and sales, and the involvement of any other defendant
 22 (which Mr. Hoskins must describe if he knows or should know due to his own
 23 involvement); (d) describe in detail whether and how that defendant is in
 24 compliance with each section of this order; and (e) provide a copy of each
 25

1 order acknowledgment obtained pursuant to this order, unless previously
2 submitted to the commission.

- 3 **2.** Additionally, individual defendant must: (a) identify all telephone numbers
4 and all email, Internet, physical, and postal addresses, including all residences;
5 (b) identify all titles and roles in all business activities, including any business
6 for which he performs services whether as an employee or otherwise and any
7 entity in which he has any ownership interest; and (c) describe in detail his
8 involvement in each such business, including title, role, responsibilities,
9 participation, authority, control, and any ownership.

- 10 **B.** For twenty (20) years following entry of this order, defendants must submit a
11 compliance notice, sworn under penalty of perjury, within fourteen (14) days of any
12 change in the following:

- 13 **1.** Defendants must report any change in: (a) any designated point of contact; or
14 (b) the structure of the corporate defendant or any entity that individual
15 defendant has any ownership interest in or directly or indirectly controls that
16 may affect compliance obligations arising under this order, including:
17 creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or
18 affiliate that engages in any acts or practices subject to this order.
- 19 **2.** Additionally, individual defendant must report any change in: (a) name
20 (including aliases or fictitious names), e-mail, Internet address, and residence;
21 (b) title or role in any business activity, including any business for which he
22 performs services whether as an employee or otherwise and any entity in
23 which he has any ownership interest, including the name, physical address,
24 and Internet address, if any, of any such business or entity.
25

- 1 **B.** Personnel records showing, for each person providing services, whether as an employee
2 or otherwise, that person's: name, addresses, and telephone numbers; job title or position;
3 dates of service; and, if applicable, the reason for termination;
- 4 **C.** Customer files showing the names, addresses, telephone numbers, dollar amounts paid,
5 and the quantity and description of goods or services purchased;
- 6 **D.** Complaints and refund requests, whether received directly or indirectly, such as through a
7 third party, and any response;
- 8 **E.** All records necessary to demonstrate full compliance with each provision of this order,
9 including all submissions to the commission; and
- 10 **F.** A copy of each advertisement or other marketing material.

11 **XIII.**
12 **COMPLIANCE MONITORING**

13 **IT IS FURTHER ORDERED** that, for the purpose of monitoring defendants'
14 compliance with this order, including the financial representations upon which part of the
15 judgment was suspended and any failure to transfer any assets as required by this order:

- 16 **A.** Within fourteen (14) days of receipt of a written request from a representative of the
17 commission, each defendant must: submit additional compliance reports or other
18 requested information, which must be sworn under penalty of perjury; appear for
19 depositions; and produce documents, for inspection and copying. The commission is also
20 authorized to obtain discovery, without further leave of court, using any of the procedures
21 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),
22 31, 33, 34, 36, 45, and 69, provided that defendants, after attempting to resolve a dispute
23 without court action and for good cause shown, may file a motion with this court seeking
24 an order including one or more of the protections set forth in Rule 26(c).
- 25

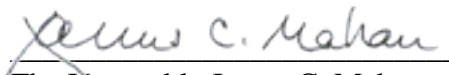
1 **B.** For matters concerning this order, the commission is authorized to communicate directly
2 with each defendant. Defendants must permit representatives of the commission to
3 interview any employee or other person affiliated with any defendant who has agreed to
4 such an interview. The person interviewed may have counsel present.

5 **C.** The commission may use all other lawful means, including posing, through its
6 representatives, as consumers, suppliers, or other individuals or entities, to defendants or
7 any individual or entity affiliated with defendants, without the necessity of identification
8 or prior notice. Nothing in this order limits the commission's lawful use of compulsory
9 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

10 **XIV.**
11 **RETENTION OF JURISDICTION**

12 **IT IS FURTHER ORDERED** that this court retains jurisdiction of this matter for
13 purposes of construction, modification, and enforcement of this order.

14
15 **IT IS SO ORDERED:**

16
17 
18 The Honorable James C. Mahan
19 UNITED STATES DISTRICT JUDGE
20 DATED: July 5, 2013
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